

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MAURICE DALTON,  
Plaintiff,

v.

SARGENT PAUL ESTES *et al.*,  
Defendants.

Case No. C05-5820RJB

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
July 14<sup>th</sup>, 2006**

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The plaintiff has been granted leave to proceed *in forma pauperis*. Before the court is defendant, State of Washington's motion to dismiss. (Dkt. # 20). The motion specifically indicates it is brought solely by the State of Washington and does not affect the other named defendants. (Dkt. # 20, page 1 footnote 1). Rather than respond Plaintiff has filed a motion to "deny hearing of State of Washington's motion to dismiss and strike LFS from case file." (Dkt. # 23). Plaintiff contends the State of Washington is not a party to this action and the legal face sheet,

1 LFS, submitted by the state should be struck from the file. (Dkt. # 23). Plaintiff's document has  
2 been considered by the court as a response to the state's motion. Plaintiff's motions within the  
3 pleading are **DENIED**.

#### 4 STANDARD OF REVIEW

5 A court should dismiss a claim under Fed.R.Civ.P. 12(b)(6) if it appears beyond doubt that  
6 the plaintiff can prove no set of facts to support the claim that would entitle the plaintiff to relief.  
7 Keniston v. Roberts, 717 F.2d 1295, 1300 (9th Cir. 1983), citing; Conley v. Gibson, 355 U.S. 41,  
8 45-56 (1957). Dismissal for failure to state a claim may be based on either the lack of a cognizable  
9 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Balistreri v.  
10 Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as  
11 admitted and the complaint is construed in the plaintiff's favor. Keniston v. Roberts, 717 F.2d 1295  
12 (9th Cir. 1983).

#### 13 DISCUSSION

14 Plaintiff did not name the State of Washington in the caption of his action, but he did name  
15 the state as a party in the body of the complaint and he seeks ten million dollars damages. (Dkt. # 5,  
16 pages 3 and 4). The state properly notes it is not a person within the meaning of 42 U.S.C. §  
17 1983.(Dkt. # 20). Neither states nor state officials acting in their official capacities are persons for  
18 purposes of 42 U.S.C. § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 48, 71 (1989).  
19 Because the state is not a person within the meaning of § 1983, plaintiff has not stated a cause of  
20 action against the state.

21 Plaintiff now contends the state is not a named party in this case. (Dkt. # 23). His argument  
22 ignores the fact that he specifically named the state in the body of the complaint. Defendant, State of  
23 Washington's motion should be **GRANTED**. A proposed order accompanies this Report and  
24 Recommendation.

25 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
26 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.  
27 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of

1 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
2 72(b), the clerk is directed to set the matter for consideration on **July 14<sup>th</sup>, 2006**, as noted in the  
3 caption.

4  
5 DATED this 16<sup>th</sup> day of June, 2006.

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8 /s/ J. Kelley Arnold  
9 J. Kelley Arnold  
United States Magistrate Judge  
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